

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-07-SE-167
Microboards Technology, LLC)	NAL/Acct. No. 200832100071
Chanhassen, Minnesota)	FRN # 0018045856

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 21, 2008

Released: August 25, 2008

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Microboards Technology, LLC (“Microboards”) is apparently liable for a forfeiture in the amount of fourteen thousand dollars (\$14,000) for willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Section 2.803(a) of the Commission’s Rules (“Rules”).² The apparent violations involve marketing unauthorized and non-compliant digital devices in the United States.

II. BACKGROUND

2. The Spectrum Enforcement Division (“Division”) of the Enforcement Bureau received a complaint alleging that Microboards was marketing the Orbit 3 Disc Duplicator, and the MicroOrbit Disc Duplicator digital video disc (“DVD”) and/or compact disc (“CD”) duplicators in the United States without the appropriate labels as required in Section 15.19 of the Rules.³ The complaint alleged that the equipment may not have been tested, or otherwise determined to comply with the conducted and emission limits in Sections 15.107 and 15.109 of the Rules,⁴ prior to marketing. The Division subsequently began an investigation. The investigation established that Microboards was either marketing, or had marketed through its website, the devices mentioned in the complaint.

3. On February 29, 2008, the Division issued a letter of inquiry (“LOI”) to Microboards.⁵

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803(a).

³ 47 C.F.R. § 15.19. The complaint also included the GX-1 Disc Publisher, DX-1 Disc Publisher, and the PF-2 Disc Printer, which have been discontinued and replaced with newer devices.

⁴ 47 C.F.R. §§ 15.107 and 15.109.

⁵ See Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Microboards. (February 29, 2008).

On April 21, 2008, Microboards responded to the LOI.⁶ In its response, Microboards acknowledged that the Orbit 3 Disc Duplicator and the MicroOrbit Disc Duplicator are subject to the verification equipment authorization procedures specified in Parts 2 and 15 of the Rules.⁷ Microboards indicated that these two devices are manufactured by its subsidiary, Microboards Manufacturing, LLC, in Salida, California.⁸ Microboards stated that it marketed the Orbit 3 Disc Duplicator for approximately six months before it was verified in September 2007 and again in March 2008 with a different power supply.⁹ Microboards also stated that it marketed the MicroOrbit Disc Duplicator from March 2007, when the device's controller (CPU) was changed to a different, larger board, until it was retested for verification in March 2008.¹⁰ Microboards indicated that when the MicroOrbit Disc Duplicator was tested in March 2008, it was found to comply with the Class A limits for conducted and radiated emissions but did not comply with the Class B radiated emission limits.¹¹ Microboards further stated that it has taken steps to ensure that the MicroOrbit Disc Duplicator will be marketed only for commercial use until it can be brought into acceptable margins for Class B radiated emission limits.¹² Finally, Microboards admitted that it sold units of the Orbit 3 Disc Duplicator and the MicroOrbit Disc Duplicator in the United States prior to verification of those devices.¹³

III. DISCUSSION

4. Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.” Section 2.803(a)(2) of the Commission’s implementing regulations provides that:

⁶ See Letter from Microboards Technology, LLC, to Gabriel Collazo, Spectrum Enforcement Division, Enforcement Bureau (April 21, 2008) (“LOI Response”).

⁷ *Id.* at 3.

⁸ *Id.* at 5.

⁹ *Id.* at 3.

¹⁰ *Id.* Microboards stated that the MicroOrbit Disc Duplicator had been tested in March 2003, before the device’s controller was changed, and found to comply with Class B limits. *Id.*

¹¹ *Id.* A Class A digital device is “[a] digital device that is marketed for use in a commercial, industrial or business environment, exclusive of a device which is marketed for use by the general public or is intended to be used in the home.” 47 C.F.R. § 15.3(h). A Class B digital device is “[a] digital device that is marketed for use in a residential environment notwithstanding use in commercial, business and industrial environments.” 47 C.F.R. § 15.3(i). Class B devices are subject to stricter conducted and radiated emission limits than Class A devices. See 47 C.F.R. §§ 15.107 and 15.109.

¹² LOI Response at 3.

¹³ *Id.* at 4. Pursuant to Sections 0.457 and 0.459 of the Rules, 47 C.F.R. §§ 0.457 and 0.459, Microboards requested confidential treatment of certain information submitted in its LOI Response, including the specific number of units of the Orbit 3 Disc Duplicator and the MicroOrbit Disc Duplicator sold in the United States, asserting that this information is commercially sensitive and has not been previously disclosed. Microboards asserted that disclosure of this information would result in substantial competitive harm. We agree and will accord confidential treatment of Microboards’ sales figures. For purposes of this *NAL*, we need not address Microboards’ request for confidential treatment of certain other information included in its response.

Except as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless ... [i]n the case of a device that is not required to have a grant of equipment authorization issued by the Commission, but which must comply with all applicable administrative (including verification of the equipment or authorization under a Declaration of Conformity, where required), technical, labeling and identification requirements specified in this chapter.

Pursuant to Section 15.101(a) of the Rules,¹⁴ unintentional radiators,¹⁵ such as Microboards' Orbit 3 Disc Duplicator and MicroOrbit Disc Duplicator, are required to be approved prior to marketing through the verification procedures described in Sections 2.951-2.962 of the Rules.¹⁶ In addition, unintentional radiators are required to comply with the conducted and radiated emissions specified in Sections 15.107 and 15.109 of the Rules.¹⁷ As the manufacturer of the Orbit 3 Disc Duplicator and MicroOrbit Disc Duplicator, Microboards is the party responsible for verifying that these devices are compliant with all applicable technical and administrative requirements.¹⁸

5. Microboards admitted that it marketed and sold units of the Orbit 3 Disc Duplicator for approximately six months before it was verified in September 2007. Microboards also admitted that it marketed and sold units of the MicroOrbit Disc Duplicator from March 2007, after it had received a CPU upgrade, until it was retested for verification in March 2008. We, accordingly, find that the Orbit 3 Disc Duplicator and MicroOrbit Disc Duplicator were marketed in the United States prior to authorization. Additionally, Microboards acknowledged that the MicroOrbit Disc Duplicator is not compliant with the Class B radiated emission limits. Based on our review of Microboards' website, it appears that Microboards was marketing the MicroOrbit Disc Duplicator for general Class B use¹⁹ prior to March 2008. Thus, we find that Microboards apparently willfully²⁰ and repeatedly²¹ violated Section 302(b) of

¹⁴ 47 C.F.R. § 15.101(a).

¹⁵ An unintentional radiator is "[a] device that intentionally generates radio frequency energy for use within the device, or that sends radio frequency signal by conduction to associated equipment via connecting wiring, but which is not intended to emit RF energy by radiation or induction." 47 C.F.R. § 15.3(z)

¹⁶ 47 C.F.R. §§ 2.951 – 2.962.

¹⁷ See 47 C.F.R. §§ 15.107 and 15.109.

¹⁸ See 47 C.F.R. § 2.909(b).

¹⁹ See note 11, *supra*.

²⁰ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*").

²¹ Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that "[t]he term 'repeated,' ... means the commission or omission of such act more than once or, if such (continued....)

the Act and Section 2.803(a)(2) of the Rules by marketing unauthorized digital devices in the United States and, in the case of the MicroOrbit Disc Duplicator, by marketing a non-compliant digital device in the United States.

6. Section 503(b) of the Act authorizes the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.²² In exercising such authority, we are required to take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²³

7. Section 503(b)(6) of the Act bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an *NAL*.²⁴ Section 503(b)(6) does not, however, bar the Commission from assessing whether Microboards’ conduct prior to that time period apparently violated the provisions of the Act and Rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period.²⁵ Thus, while we may consider the fact that Microboards’ conduct has continued over a period that began on March 2007, the forfeiture amount we propose herein relates only to Microboards’ apparent violations that have occurred within the past year.

8. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”)²⁶ and Section 1.80(b)(4) of the Rules,²⁷ the base forfeiture amount for the marketing of unauthorized or non-compliant equipment is \$7,000. Section 503(b)(2)(D) of the Act authorizes the Commission to assess a maximum forfeiture of \$11,000 for each violation, or each day of a continuing violation, up to a statutory maximum forfeiture of \$97,500 for any single continuing violation.²⁸ Based on the record before us, we find that

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commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). See *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001); *Southern California*, 6 FCC Rcd at 4388.

²² 47 U.S.C. § 503(b).

²³ 47 U.S.C. § 503(b)(2)(E).

²⁴ 47 U.S.C. § 503(b)(6).

²⁵ See 47 U.S.C. § 503(b)(2)(E), 47 C.F.R. § 1.80(b)(4); see also *Behringer USA, Inc.*, Notice of Apparent Liability, 21 FCC Rcd 1820, 1825 (2006), *forfeiture ordered*, 22 FCC Rcd 10451 (2007) (forfeiture paid); *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, Forfeiture Order, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-71 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 ¶ 7 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 (1967), *recon. den.*, 11 FCC 2d 193 (1967); *Bureau D’Electronique Appliquee, Inc.*, Notice of Apparent Liability, 20 FCC Rcd 3445, 3447-48 (Enf. Bur., Spectrum Enf. Div. 2005), *forfeiture ordered*, Forfeiture Order, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div. 2005).

²⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

²⁷ 47 C.F.R. § 1.80(b)(4).

²⁸ 47 U.S.C. § 503(b)(2)(D). The Commission has amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), three times to increase the maximum forfeiture amounts, in accordance with the inflation adjustment (continued....)

Microboards is apparently liable for a base forfeiture of \$7,000 for each of the two models of unauthorized or non-compliant devices it marketed, for a total proposed forfeiture of \$14,000.²⁹ Consistent with precedent, we have considered the statutory factors set forth above and conclude that no adjustment of the proposed forfeiture from the aggregate base amount is warranted.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act³⁰ and Sections 0.111, 0.311 and 1.80 of the Rules,³¹ Microboards Technologies **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fourteen thousand dollars (\$14,000) for willfully and repeatedly violating Section 302(b) of the Act and Section 2.803(a) of the Rules.

10. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture and Order*, Microboards Technologies, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 270000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Microboards will also send electronic notification on the date said payment is made to Gabriel Collazo at

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requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. *See Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts from \$10,000/\$75,000 to \$11,000/\$87,500); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory amounts from \$11,000/\$87,500 to \$11,000/\$97,500); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845 (2008) (adjusting the maximum statutory amounts from \$11,000/\$97,500 to \$16,000/\$112,500). The most recent inflation adjustment is effective September 2, 2008. *See* 73 Fed. Reg. 44663-5.

²⁹ *See, e.g., San Jose Navigation, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 2873 (2006), forfeiture ordered, 22 FCC Rcd 1040 (2007), response pending; *Samson Technologies, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 4221, 4225 (2004), consent decree ordered, 19 FCC Rcd 24509 (2004) (both finding that the marketing of each separate model of unauthorized equipment constitutes a separate violation).

³⁰ 47 U.S.C. § 503(b).

³¹ 47 C.F.R. § 0.111, 0.311 and 1.80.

Gabriel.Collazo@fcc.gov and Neal McNeil at Neal.McNeal@fcc.gov.

12. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent first class and certified mail to John Westrum, Vice President of Operations, Microboards Technologies, LLC, 8150 Mallony Court, PO Box 846, Chanhassen, MN 55317, and by facsimile and first class mail to its counsel, Robert J. Ungar, Esq., Fish & Richardson, P.C., 1425 K Street, NW, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau